
(2019) 03 CAT CK 0099

In the Central Administrative Tribunal

Case No : Original Application No. 3750 Of 2017

Dinesh Kumar

APPELLANT

Vs

Govt. Of NCT Of Delhi

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Delhi Police (Punishment & Appeal) Rules, 1980 — Rule 11, 12, 15

Citation : (2019) 03 CAT CK 0099

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Anil Singal, Harvinder Oberoi

Final Decision : Dismissed

Judgement

S.N.Terdal, J

1. We have heard Mr. Anil Singal, counsel for applicant and Mrs. Harvinder Oberoi, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(a) Call for the records of the case and set aside/quash the Order dt. 21.2.2017, Summary of Allegations dt. 8.3.2017 and Order dt. 16.5.2017.

Or alternatively

Direct the respondents to keep in abeyance the departmental enquiry initiated vide order dt. 21.2.2017 during the pendency of the criminal case till the defence of the applicant is disclosed in the criminal case.

(b) To award costs in favour of the applicant and pass any order or orders which this Hon'ble Tribunal may deem just an equitable in the facts and circumstances of the case."

3. The relevant facts of the case are that on the allegation that the applicant

while performing traffic police duty at red light Apollo Hospital demanded monthly payment of Rs.500/- from one Manoj Kumar for allow him ply his commercial vehicle, a departmental enquiry was initiated. The summary of allegation is extracted below:

"It is alleged against you CT Dinesh Kumar, No. 3125/T,PIS No. 28100533 that on dated 26.09.2016, Shri Manoj Kumar S/o Shri Prahlad Singh came in the vigilance office Barakhamba Road, New Delhi and gave a complaint against you CT Dinesh Kumar no. 3125-T (PIS No. 28100533) and CT Shiv Raj performing traffic duty at red light Apollo Hospital that they are demanding monthly payment to ply his vehicle on the route between MadanPur Khadar to Nehru Place. On your demand he agreed to pay them Rs.1500/- and you told him to gave the same in lieu of plying his vehicles o the route.

On the complaint/statement of complainant Manoj Kumar a raid was conducted on 26.09.2016 by a team of Vigilance Branch, Barakhamba Road, New Delhi along with complainant and independent witness near the red light Apollo hospital. During the raid you CT Dinesh Kumar No. 3125-T was caught red handed while accepting the bribe money of Rs.1500/- from the complainant Manoj Kumar and the raiding team recovered the said bribe money from the possession of you CT Dinesh Kumar No. 3125-T. The bribe money was handed over to you CT Dinesh Kumar No. 3125-T by the complainant Manoj Kumar on your demand. Further a case vide FIR N.6/16/U/S 7/13(1)/(d)/POC Act dated 26.09.2016 was registered at PS Vigilance in this regard and you CT Dinesh Kumar No. 3125-T was arrested in the case.

The above act on the part of you CT Dinesh Kumar, No. 3125-T, PIS No. 28100533 amounts to gross misconduct and unbecoming a Police officer in the discharge of official duty and thus liable for departmental action under provisions Delhi Police (Punishment & Appeal) Rules, 1980."

4. Alongwith the summary of allegation, list of documents and list of witnesses were served on the applicant. As stated in the summary of allegation on the same facts an FIR No. 6/16 u/s 7 /13(1)(d) of Prevention of Corruption Act dated 26.09.2016 a case was registered at Police Station Vigilance and the applicant was arrested. The applicant has filed the present OA seeking a direction to quash the said summary of allegation and or alternatively to keep the said departmental enquiry in abeyance pending disposal of the criminal case filed under the above stated FIR no. 6/16.

5. The counsel for the applicant vehemently and strenuously contended that in case the departmental enquiry is not kept in abeyance his defence that he is going to put forward by way of cross-examination of the witnesses in the departmental enquiry will be known to the witnesses and he will be put to prejudice in effectively taking defence in the criminal proceedings. The counsel for the respondents equally vehemently contended that there is no bar for holding the departmental enquiry simultaneously with criminal proceedings and

in support of her contention she relied on the Standing Order No. A-20 (Previously Standing Order No. 125/2010) and the Full Bench judgment of this Tribunal dated 14.03.2011 in the case of Sukhdev Singh and Another Vs. Govt. of NCT of Delhi (OA 2816/2008 with connected OAs). She has specifically relied upon the following paragraph of the said standing order:

"(10) PARALLEL D.E. WHEN COURT CASE IS PENDING

The Hon'ble Supreme Court of India in the case of Capt. M.Paul Anthony V. Bharat Gold Mines Ltd. (AIR 1999 SC 1416), laid down five broad parameters, to deal with cases where departmental proceedings and criminal case are based on identical set of facts. These parameters are as follows:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or reflected in the charge sheet.

(iv) The facts mentioned (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty administration may get rid of him at the earliest....."

She further relied upon the following ruling of Full Bench judgment in the case of Sukhdev Singh (supra) which reads as:

"Provisions of rules 11, 12 and 15, in our considered view, contain no express or implied bar for holding simultaneous criminal and departmental proceedings."

6. In view of the Full Bench decision of this Tribunal in the case of Sukhdev (Supra) and in view of the clear provision of the Standing Order No. A-20 (Previously Standing Order No. 125/2010), we are of the opinion that there is no merit in this case.

7. Accordingly OA is dismissed. No order as to costs.